THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No. 23467 of 2005

Dated: 17.01. 2005

Between:

D. Ramanaiah.

..PETITIONER

AND

The Chief General Manager Telecom (BSNL)
Andhra Pradesh, Door Sanchar Bhavan,
Hyderabad –1 and another.

...**RESPONDENTS**

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Writ Petition No. 23467 of 2005

ORDER:

The writ petition is filed seeking to call for the records pertaining to the engagement of freshers as casual labourers who are juniors to the petitioner duly converting them as full time casual labourers and declare the action of the respondents in not considering the case of the petitioner to re-engage as Casual Mazdoor/Labourer duly giving preference over the freshers as illegal and arbitrary, and consequently direct the respondents to consider the case of the petitioner and regularise his services as regular Mazdoor with all consequential benefits.

The petitioner states that he was engaged as casual labour in the respondents' organisation on 23-5-1995 Thereafter, he states that he worked as casual Mazdoor for 173 days in the year 1996, 295 days in 1997, 294 days in 1998 and 175 days up to 31st July, 1999. He further states that when he was not re-engaged, he submitted representation on 12-06-2004 to the General Manager seeking his re-engagement and conversion as full time casual labourer, but the 2nd respondent rejected the claim of the petitioner for re-engagement as casual labour vide order dated 25-9-2004. It is the grievance of the petitioner that the persons who are juniors to him were granted full time casual labourer status, but he was overlooked, and such action of the respondents, the petitioner contends is illegal and arbitrary.

Respondents filed counter affidavit denying the writ averments. In the counter it stated that the petitioner is neither a casual labourer nor a part-time casual labourer. There is no proof submitted indicating the number of days worked in each month and in each year. There is

no proof that he worked on consolidated wages, nor did he submit any particulars of the wages paid to him for the work done. The engagement is confined for a period of 100 days in contingency works vide DOT letter No.269-4/93 STN-II (Pt) dtd.15/6/99 and thus the respondents are not engaging any casual labourers and engagement of the petitioner in preference to the freshers does not arise. The Department of Telecommunications introduced the casual labourers (grant of temporary status and regularisation) Scheme of 1989 for the grant of temporary status to the casual labourer. According to the scheme, to claim the benefit of temporary status one should have worked for 8 hours per day and should be currently employed and rendered a continuous service of at least one year and during that period he should be engaged for 240 days. Petitioner is not a full time casual labourer and the scheme is not applicable to him as the petitioner neither worked during that period nor completed 240 days in the preceding year before the cut off date 30-3-1985. The petitioner was not considered as he was not under engagement as on 1-8-1998 and the petitioner did not submit any proof in support of his claim, and there is no scope to engage the petitioner in view of the fact that ban orders are in force, and the petitioner failed to meet eligibility criteria as per the rules in vogue. The claim of the petitioner that his juniors were granted conversion into full time was rejected by the 2nd respondent through speaking order indicating the reasons for rejection and the petitioner may rebut the speaking order by producing the relevant records in support of his claim.

Learned counsel for the petitioner submitted that the action of the respondents in granting full time casual labourer status to persons who are juniors to the petitioner and overlooking the case of the petitioner for grant of full time casual labourer status and not re-engaging him as casual labourer is illegal and arbitrary.

Learned Standing Counsel for the respondents submitted that the petitioner is neither a casual labourer nor a permanent casual labour and he has not completed the number of man-days that are required for regularisation of his service. Counsel further submitted that in view of the judgment of the apex Court in "***Steel Authority of India Ltd. v. National Union Water Front Workers***[1]" the remedy of the petitioner is to approach the labour authorities under the Industrial Disputes Act, 1947, and no relief can be granted to him.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

The writ petition raises disputed questions of fact, namely whether the petitioner is entitled to full time casual labourer status, whether ignoring his claim the respondents conferred full-time labourer status to his juniors, whether he worked during the strike period, and whether he had put in the required number of man days, which entitled him to seek regularization, and such disputed questions of fact, the law is well settled cannot be conveniently gone into by this Court under Article 226 of the Constitution of India, for they require adducing of evidence by the parties. Be that as it may, in ***Steel Authority of India Ltd's case*** the apex Court observed that the determination of question as to whether the contract of employment of labour is a genuine one or a mere ruse/camouflage to evade the provisions of beneficial labour legislation, requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution, and the appropriate authority to go into those issues will be Industrial Tribunal/Court whose determination will be amenable to judicial review. Hence, this Court, in exercise of jurisdiction under Article 226 of the Constitution, cannot go into the disputed questions of fact and grant any relief to the petitioner, and the remedy of the petitioner, if any, is to approach the labour authorities under the Industrial Disputes Act, 1947.

Accordingly, the writ petition is disposed of granting liberty to the petitioner to approach the labour authorities under the Industrial Disputes Act, 1947 for the relief sought in the writ petition. No costs.

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N.V.RAMANA,J

DATE: 17.01.2007
Grk/TVK

THE HONOURABLE SRI JUSTICE N.V.RAMANA

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[1] 2001 (6) ALD 1 (SC)